nearly two thousand million dollars, had its origin in private spite:

"A story about the late Lord Bath, to which Canon MacColl refers in the *Contemporary Review*, is as follows: 'He had been travelling in different parts of the Turkish Empire just before the Crimean War, and had noted the devastation, iniquity and cruelty, which are invariable products of Ottoman rule. He arrived at the Dardanelles while the combined fleets of France and England, under command of Admiral Dundas, were anchored there, waiting for a favorable wind to take them to Constantinople. The Admiral begged Lord Bath to call on the British Ambassador, Sir Stratford de Redcliffe, as soon as he reached Constantinople, and tell him that the Anglo-French fleet was at the Dardanelles, and would proceed to Constantinople as soon as the wind permitted. On receiving the message, the Ambassador jumped off his chair and — apparently forgetting the presence of his visitor — walked up and down the room muttering to himself, "Ah! The fleet will soon be here. Once it's here, there must be war. It can't be avoided. I shall take care that it is not avoided. I vowed to have my revenge upon that man, and now, by Heaven, I've got it." This story I received from Lord Bath's own lips, with permission to publish it.'"

Fredrik Bajer, of Copenhagen, president of the Society for the Neutralization of Denmark and an ex-member of the Danish Parliament, has just published in a folio pamphlet of thirty pages in French an extended discussion on the subject of the transformation of armies into productive organizations, so long as they are kept up. This subject, which has no special interest for us in America, is receiving a good deal of attention in Europe, where over four millions of men are constantly maintained in idleness, at a cost of about one thousand millions of dollars a year.

The Socialists of various nations organized a great international peace demonstration in Hyde Park, London, at the end of July. Representatives from twenty or more nations attended, and several hundred British and foreign workingmen's societies and trades unions participated. Multitudes of people gathered in the Park, and there were processions, banners, music and speeches — and the customary English downpour of rain, which considerably interfered with the proceedings. The Socialist protest against war would be much more effective, if the evils of capital and private ownership of land were not made the sole cause of war. Capital as often used has evils, plenty of them, which ought to be protested against, but we doubt if it can be shown that capital has ever been the chief cause of an *international* war. War has many causes, all of which ought to be sought out and removed.

At the annual encampment of the G. A. R. of the State of New York this year the following resolution was passed:

Resolved, That the broad Christian principle which underlies the present international movement in favor of arbitration commends itself to the veterans of the Grand Army of the Republic of the State of New York. We heartily approve of the efforts that are being made to provide a way by which bloody wars and unnecessary armaments may be avoided, and all international differences settled by honorable methods based upon law, reason and justice.

Col. Albert D. Shaw, who was chairman of the Committee on Resolutions, made an address of unusual merit in presenting the resolution. The address has since been printed and circulated, and may be had by addressing Mr. Shaw at Watertown, N. Y. We are indebted to him for a copy.

The London Peace Society has recently sent an address to the Emperor of Germany earnestly entreating him as foremost among the Protestant rulers of Europe to use his influence to bring about a special advocacy of peace and goodwill by the clergy of Germany.

We are in receipt of the Annual Report of the London Peace Society for 1895-96, in pamphlet form. It covers thirty closely printed pages. The contents of the report, which is full of interest, have been noted in a previous issue of the ADVOCATE.

The Secretary of the American Peace Society gave, by invitation, an address on International Arbitration as a Substitute for War, before the Pascataqua Congregational Club at their annual reunion and banquet at Portsmouth, N. H., on the 2d of July.

Miss Farmer, the founder and director of *Greenacre* at Eliot, Maine, is a devoted and active friend of the cause of peace and arbitration. She held a Peace Conference at Greenacre on the 2d of July, at which, besides other exercises, an interesting and instructive address on "An International Tribunal" was given by Mr. Henry Wood, of Boston. The address was published in full in *The Greenacre Voice*. On the 4th of July an entertaining address was given at the same place on "Patriotism and Peace" by Rev. L. H. Angier, D.D., of Boston, one of the vice-presidents of the American Peace Society, who has been connected with its work for nearly fifty years.

INTERNATIONAL LAW AND INTERNATIONAL ARBITRATION.

LORD CHIEF JUSTICE RUSSELL'S ADDRESS BEFORE THE AMERICAN BAR ASSOCIATION.

SARATOGA, N. Y., August 20, 1896.

MR. PRESIDENT: My first words must be in acknowledgment of the honor done me by inviting me to address you on this interesting occasion. You are a congress of lawyers of the United States met together to take counsel, in no narrow spirit, on questions affecting the interests of your profession; to consider necessary amendments in the law which experience and time develop, and

to examine the current of judicial decision and of legislation, State and Federal, and whither that current tends. I, on the other hand, come from the judicial bench of a distant land, and yet I do not feel that I am a stranger among you, nor do you, I think, regard me as a stranger. Though we represent political communities which differ widely in many respects, in the structure of their constitutions and otherwise, we yet have many things in common.

We speak the same language; we administer laws based on the same juridical conceptions; we are co-heirs in the rich traditions of political freedom long established, and we enjoy in common a literature, the noblest and the purest the world has known—an accumulated store of centuries to which you, on your part, have made generous contribution. Beyond this the unseen "crimson thread" of kinship, stretching from the mother islands to your great continent, unites us, and reminds us always that we belong to the same, though a mixed, racial family. Indeed the spectacle which we to-day present is unique. We represent the great English-speaking communities — communities occupying a large space of the surface of the earth — made up of races wherein the blood of Celt and Saxon, of Dane and Norman, of Pict and Scot, are mingled and fused into an aggregate power held together by the nexus of a common speech— combining at once territorial dominion, political influence and intellectual force greater than history records in the case of any other people. This consideration is prominent among those which suggest the theme on which I desire to address you — namely, international law.

The English-speaking peoples, masters not alone of extended territory, but also of a mighty commerce, the energy and enterprise of whose sons have made them the great travellers and colonizers of the world, have interests to safeguard in every quarter of it, and, therefore, in a special manner it is important to them that the rules which govern the relations of states *inter se* should be well understood and should rest on the solid basis of convenience, of justice and of reason. One other consideration has prompted the selection of my subject. I knew it was one which could not fail, even if imperfectly treated, to interest you. You regard with just pride the part which the judges and writers of the United States have played in the development of international law. Story, Kent, Marshall, Wheaton, Dana, Woolsey, Halleck and Wharton, among others, compare not unfavorably with the workers of any age, in this province of jurisprudence.

International Law, then, is my subject. The necessities of my position restrict me to, at best, a cursory and perfunctory treatment of it. I propose briefly to consider what is international law; its sources; the standard — the ethical standard — to which it ought to conform; the characteristics of its modern tendencies and developments, and then to add some, I think, needful words on the question, lately so much discussed, of international arbitration.

INTERNATIONAL LAW DEFINED.

I call the rules which civilized nations have agreed shall bind them in their conduct *inter se*, by the Benthamite title, "international law." And here, Mr. President, on the threshold of my subject I find an obstacle in my way. My right so to describe them is challenged. It is said by some that there is no international law, that there is only a bundle, more or less confused, of rules to which nations more or less conform, but that international law there is none. The late Sir James F. Stephen takes this view in his "History of the Criminal Law of England," and in the celebrated Franconia case (to which I shall hereafter have occasion to allude) the late Lord Coleridge speaks in the same sense. He says: "Strictly speaking, 'international law' is an inexact expression, and it is apt to mislead if its inexactness is not kept in mind. Law implies a lawgiver and a tribunal capable of enforcing it and coercing its transgressors." Indeed, it may be said that, with few exceptions, the same note is sounded throughout the judgments in that case. These views, it will at once be seen, are based on the definition of law by Austin in his "Province of Jurisprudence Determined," namely, that a law is the command of a superior who has coercive power to compel obedience and punish disobedience. But this definition is too narrow; it relies too much on force as the governing idea. If the development of law is historically considered, it will be found to include that body of customary law which in early stages of society precedes law, which assumes, definitely, the character of positive command coupled with punitive sanctions. But even in societies in which the machinery exists for the making of law in the Austinian sense, rules or customs grow up which are laws in every real sense of the word, as, for example, the law merchant. Under later developments of arbitrary power laws may be regarded as the command of a superior with a coercive power in Austin's sense: *Quod placuit principi legis vigorem habet.* In stages later still, as government becomes more frankly democratic, resting broadly on the popular will, laws bear less and less the character of commands imposed by a coercive authority, and acquire more and more the character of customary law founded on consent. Savigny, indeed, says of all law, that it is first developed by usage and popular faith, then by legislation, and always by internal silently operating powers, and not mainly by the arbitrary will of the lawgiver.

I claim, then, that the aggregate of the rules to which nations have agreed to conform in their conduct toward one another are properly to be designated "international law." The celebrated author of "Ecclesiastical Polity," the "Judicious" Hooker, speaking of the Austinians of his time, says: "They who are thus accustomed to speak apply the name of law unto that only rule of working which superior authority imposeth, whereas we, somewhat more enlarging the sense thereof, term every kind of rule or canon whereby actions are framed a law." I think it cannot be doubted that this is nearer to the true and scientific meaning of law.

What, then, is international law? I know no better definition of it than that it is the sum of the rules or usages which civilized states have agreed shall be binding upon them in their dealings with one another.

Is this accurate and exhaustive? Is there any *a priori* rule of right or of reason or of morality which, apart from and independent of the consent of nations, is part of the law of nations? Is there a law which nature teaches, and which, by its own force, forms a component part of the law of nations? Was Grotius wrong when to international law he applied the test "*placuit ne Gentibus*"?

MR. CARTER'S DIFFERENT OPINION.

These were points somewhat in controversy between my learned friend, Mr. Carter, and myself before the Paris Tribunal of Arbitration in 1893, and I have recently

received from him a friendly invitation again to approach them — this time in a judicial rather than in a forensic spirit. I have reconsidered the matter, and after the best consideration which I can give to the subject, I stand by the proposition which in 1893 I sought to establish. That proposition was that international law was neither more nor less than what civilized nations have agreed shall be binding on one another as international law.

Appeals are made to the law of nature and the law of morals, sometimes as if they were the same things, sometimes as if they were different things, sometimes as if they were in themselves international law, and sometimes as if they enshrined immutable principles which were to be deemed to be not only part of international law, but, if I may so say, to have been pre-ordained. I do not stop to point out in detail how many different meanings have been given to these phrases— the law of nature and the law of morals. Hardly any two writers speak of them in the same sense. No doubt appeals to both are to be found scattered loosely here and there in the opinions of Continental writers.

Let us examine them. What is the law of nature? Moralists tell us that for the individual man life is a struggle to overcome nature, and in early and, what we call natural or barbarous states of society, the arbitrary rule of force and not of abstract right or justice is the first to assert itself. In truth, the initial difficulty is to fix what is meant by the law of nature. Gaius speaks of it as being the same thing as the *jus gentium* of the Romans, which, I need not remind you, is not the same thing as *jus inter gentes.* Ulpian speaks of the *jus naturale* as that in which men and animals agree. Grotius uses the term as equivalent to the *jus stricte dictum*, to be completed in the action of a good man or state by a higher morality, but suggesting the standard to which law ought to conform. Puffendorf in effect treats his view of the rules of abstract propriety, resting merely on unauthorized speculations, as constituting international law and acquiring no additional authority from the usage of nations; so that he cuts off much of what Grotius regards as law. Ortolan, in his "*Diplomatie de la Mer*," cites with approval the following incisive passage from Bentham, speaking of so-called natural rights springing from so-called natural law:

"Natural right is often employed in a sense opposed to law, as when it is said, for example, that law cannot be opposed to natural right the word 'right' is employed in a sense superior to law, a right is recognized which attacks law, upsets and annuls it. In this sense, which is antagonistic to law, the word '*droit*' is the greatest enemy of reason and the most terrible destroyer of governments.

"We cannot reason with fanatics armed with a natural right, which each one understands as he pleases, applies as it suits him, of which he will yield nothing, withdraw nothing, which is inflexible at the same time that it is unintelligible, which is consecrated in his eyes like a dogma and which he cannot discard without a cry. Instead of examining laws by their results, instead of judging them to be good or bad, they consider them with regard to their relation to this so-called natural right. That is to say, they substitute for the reason of experience all the chimeras of their own imagination."

Austin also in his work on jurisprudence, already mentioned, and referring to Puffendorf and others of his school, says:

"They have confounded positive international morality or the rules which actually obtain among civilized nations in their mutual intercourse with their own vague conceptions of international morality as it ought to be, with that indeterminate something which they call the law of nature. Professor von Martens, of Göttingen, is actually the first of the writers on the law of nations who has seized this distinction with a firm grasp; the first who has distinguished the rules which ought to be received in the intercourse of nations, or which would be received if they conformed to an assumed standard of whatever kind, from those which are so received, endeavored to collect from the practice of civilized communities what are the rules actually recognized and acted upon by them and gave to these rules the name of positive international law."

Finally, Woolsey, speaking of this class of writers, says they commit the fault of failing to distinguish sufficiently between natural justice and the law of nations, of spinning the web of a system out of their own brain as if they were the legislators of the world, and of neglecting to inform us what the world actually holds the law to be by which nations regulate their conduct. So much for the law of nature.

THE APPEAL TO THE LAW OF MORALITY.

What are we to say of the appeal to the law of morality? It cannot be affirmed that there is a universally accepted standard of morality. Then what is to be the standard? The standard of what nation? The standard of what nation and in what age?

Human society is progressive — progressive, let us hope, to a higher, a purer, a more unselfish ethical standard. The Mosaic law enjoined the principle of an eye for an eye, a tooth for a tooth. The Christian law enjoins that we love our enemies and that we do good to those who hate us. But more. Nations, although progressing, let us believe, in the sense which I have indicated, do not progress *pari passu.* One instance occurs to me pertinent to the subject in hand.

Take the case of privateering. The United States is to-day the only great Power which has not given its adhesion to the principle of the Declaration of Paris of 1856 for the abolition of privateering. The other great nations of the earth have denounced privateering as immoral and as the cover and the fruitful occasion of piracy. I am not at all concerned to discuss in this connection whether the United States was right or wrong. It would not be pertinent to the point; but it is just to add that the assenting Powers had not scrupled to resort to privateering in past times, and also that the United States declared its willingness to abandon the practice if more complete immunity of private property in time of war were secured.

Nor do nations, even where they are agreed on the inhumanity and immorality of given practices, straightway proceed to condemn them as international crimes. Take as an example of this the slave trade. It is not too much to say that the civilized Powers are abreast of one another in condemnation of the traffic in human beings, as an unclean thing — abhorrent to all principles of humanity and morality — and yet they have not yet agreed to declare this offence against humanity and morality to be an offence against the law of nations. That it is not so has been affirmed by English and by American judges alike. Speaking of morality in connection with interna-

tional law, Professor Westlake, in his "Principles of International Law," acutely observes that while the rules by which nations have agreed to regulate their conduct *inter se* are alone properly to be considered international law, these do not necessarily exhaust the ethical duties of States one to another, any more, indeed, than municipal law exhausts the ethical duties of man to man; and Dr. Whewell has remarked of jural laws in general that they are not (and perhaps it is not desirable that they should be) coextensive with morality. He says the adjective right belongs to the domain of morality; the substantive right to the domain of law.

NOT NATURAL OR MORAL LAW.

The truth is that civilized men have at all times been apt to recognize the existence of a law of morality, more or less vague and undefined, depending upon no human authority and supported by no human external sanction other than the approval and disapproval of their fellowmen, yet determining largely for all men and societies of men what is right and wrong in human conduct and binding, as is sometimes said, *in foro conscientiae*. This law of morality is sometimes treated as synonymous with the natural law, but sometimes the natural law is regarded as having a wider sphere, including the whole law of morality. It cannot be said either of international law or of municipal law that they include the moral law nor accurately or strictly that they are included within it. It is a truism to say that municipal law and international law ought not to offend against the law of morality. They may adopt and incorporate particular precepts of the law of morality; and, on the other hand, undoubtedly, that may be forbidden by the municipal or international law which in itself is in no way contrary to the law of morality or of nature. But while the conception of the moral law or law of nature excludes all idea of dependence on human authority, it is of the essence of municipal law that its rules have been either enacted or in some way recognized as binding by the supreme authority of the state (whatever that authority may be), and so also is it of the essence of international law that its rules have been recognized as binding by the nations constituting the community of civilized mankind.

We conclude, then, that while the aim ought to be to raise high its ethical standard, international law, as such, includes only so much of the law of morals or of right reason or of natural law (whatever these phrases may cover) as nations have agreed to regard as international law.

In fine, international law is but the sum of those rules which civilized mankind have agreed to hold as binding in the mutual relations of States. We do not indeed find all those rules recorded in clear language — there is no international code. We look for them in the long records of customary action; in settled precedents; in treaties affirming principles; in state documents; in declarations of nations in conclave — which draw to themselves the adhesion of other nations; in declarations of text writers of authority generally accepted, and, lastly, and with most precision, in the field which they cover in the authoritative decisions of prize courts. I need hardly stop to point out the great work under the last head accomplished among others, by Marshall and Story in these States, by Lord Stowell in England, and by Portalis in France.

From these sources we get the evidence which determines whether or not a particular canon of conduct, or a particular principle has or has not received the express or implied assent of nations. But international law is not as the Twelve Tables of ancient Rome. It is not a closed book. Mankind are not stationary. Gradual change and gradual growth of opinion are silently going on. Opinions, doctrines, usages, advocated by acute thinkers, are making their way in the world of thought. They are not yet part of the law of nations. In truth, neither doctrines derived from what is called the law of nature (in any of its various meanings) nor philanthropic ideas however just or humane, nor the opinions of text writers, however eminent, nor the usages of individual states — none of these, nor all combined, constitute international law.

If we depart from the solid ground I have indicated, we find ourselves amid the treacherous quicksands of metaphysical and ethical speculation; we are bewildered, particularly by the French writers in their love for *un système*, and preplexed by the obscure subtleties of writers like Hautefeuille, with his *loi primitive* and *loi secondaire*. Indeed, it may, in passing, be remarked that history records no case of a controversy between nations having been settled by abstract appeals to the laws of nature or of morals.

But while maintaining this position, I agree with Woolsey when he says that if international law were not made up of rules for which reasons could be given, satisfactory to man's intellectual and moral nature, it would not deserve the name of a science. Happily those reasons can be given. Happily men and nations propose to themselves higher and still higher ethical standards. The ultimate aim in the actions of men and of communities ought, and I presume will be admitted to be, to conform to the Divine precept, "Do unto others as you would that others should do unto you."

FAILURES AT CODIFICATION.

I have said that the rules of international law are not to be traced with the comparative distinctness with which municipal law may be ascertained—although even this is not always easy. I would not have it, however, understood that I should to-day advocate the codification of international law. The attempt has been made, as you know, by Field in this country, and by Prof. Bluntschli of Heidelberg, and by some Italian jurists, but has made little way toward success. Indeed, codification has a tendency to arrest progress. It has been so found, even where branches or heads of municipal law have been codified, and it will at once be seen how much less favorable a field for such an enterprise international law presents, where so many questions are still indeterminate. After all, it is to be remembered that jural law in its widest sense is as old as society itself; *ubi societas ibi jus est;* but international law, as we know it, is a modern invention. It is in a state of growth and transition. To codify it would be to crystallize it; uncodified it is more flexible and more easily assimilates new rules. While agreeing, therefore, that indeterminate points should be determined and that we should aim at raising the ethical standard, I do not think we have yet reached the point at which codification is practicable, or, if practicable, would be a public good.

Let me give you an analogy. Among the most successful experiments in codification in English communities have been those in Anglo-India, particularly the Penal Code and the Codes of Criminal and Civil Procedure. Prompted by their comparative success, Sir Roland Wilson urged the extension of the process of codi-

fication to those traditional unwritten native usages, or customary law, of Hindoo or Mahometan origin, still recognized in the government of India by Englishmen. But the wiser opinion of Indian experts was that it was better not to persevere in the attempt. Many of these usages, by sheer force of contact with European life and habits of thought, are falling into desuetude. The hand of change is at work upon them, and to codify them would be to stop the natural progress of disintegration.

As we are not to-day considering the history of international law, I shall say but a word as to its rise, and then pass on to the consideration of its later developments and tendencies.

Like all law, in the history of human societies it begins with usage and custom, and, unlike municipal law, it ends there. When, after the break-up of the Roman Empire, the surface of Europe was partitioned and fell under the rule of different sovereigns, the need was speedily felt for some guiding rule of international conduct. International law was in a rudimentary stage; it spoke with ambiguous voice, it failed to cover the whole ground of doubtful action. It needed not only an interpreter of authority, but one who should play at once the part of mediator, arbiter and judge. The Christian religion has done much to soften and humanize the action of men and of nations, and the Papal head of Christendom became, after the disruption of the Roman Empire, the interpreter and almost the embodiment of international law. The Popes of the Middle Ages determined many a hot dispute between rival forces without loss of human life. Their decrees were widely accepted. Their action, however, at the best, could not adequately supply the place of a rule of conduct to which all might indifferently appeal. And when, later, with the Reformation movement, the time came when the Pope could not command recognition as the religious head of a united Christendom, the necessity of the time quickened men's brains and, under the fostering care of the jurists of many lands, there began to emerge a system which gave shape and form to ideals generally received and largely acted on by nations.

What Sir James Stephen has eloquently said of religion may truly be predicated of international law. The jurists set to music the tune which was haunting millions of ears. It was caught up, here and there, and repeated till the chorus was thundered out by a body of singers able to drown all discords and to force the vast unmusical mass to listen to them.

Although Hugo de Groot is regarded as the father and founder of international law, he was preceded by two men born into the world forty years before him, namely, Ayala (the Spanish Judge-Advocate with the army of the Prince of Parma), and Suarez (a Jesuit priest, also a Spaniard), both born in 1548, whose labors ought not to be forgotten. Suarez in his "De Legibus et Deo Legislatore" and Ayala in his "De Jure et Officiis Belicis et Disciplina Militari" has done good work.

WHAT SUAREZ SAID.

Suarez, from the point of view of the Catholic theologian, assumes that the principles of the moral law are capable of complete and authoritative definition and are supported by the highest spiritual sanction. He therefore treats of the *lex naturalis* as a definite substantive law, sufficient and complete in its own sphere and binding on all men. But he regards international law as a code of rules dealing with matters outside the sphere of the natural law—matters not strictly right or wrong in themselves, but becoming so only by virtue of the precepts of the law which he considers to be founded upon the generally recognized usages of nations. In the following passage, which is interesting from the singular modernness of its spirit, he explains his view of the origin of international law.

"The foundation of the law of nations lies in this, that the human race, though divided into various peoples and kingdoms, has always a certain unity, which is not merely the unity of species, but is also political and moral, as is shown by the natural precept of mutual love and pity, which extends to all peoples, however foreign they may be to one another, and whatever may be their character or constitution. From which it follows that although any state, whether a republic or a kingdom, may be a community complete in itself, it is nevertheless a member of that whole which constitutes the human race; for such a community is never so completely self-sufficing but that it requires some mutual help and intercourse with others, sometimes for the sake of some benefit to be obtained, but sometimes, too, from the moral necessity and craving which are apparent from the very habits of mankind.

"On this account, therefore, a law is required by which States may be rightly directed and regulated in this kind of intercourse with one another. And although to a great extent this may be supplied by the natural law, still not adequately nor directly, and so it has come about that the usages of states have themselves led to the establishment of special rules. For, just as within an individual state custom gives rise to law, so for the human race as a whole usages have led to the growth of the laws of nations; and this the more easily, inasmuch as the matters with which such law deals are few and are closely connected with the law of nature from which they may be deduced by inferences which, though not strictly necessary, so as to constitute laws of absolute moral obligation, still are very comformable and agreeable to nature, and therefore readily accepted by all."

Nor ought we to overlook the work of a writer even earlier than these. I mean Franciscus à Victoria. Hall says of him that his writings in 1533 mark an era in the history of international ethics. Spain claimed, largely by virtue of Papal grant and warrant, to acquire the territory and the mastery of the semi-civilized races of America. He denied the validity of the Papal title; he maintained the sovereign rights of the aboriginal races, and he claimed to place international relations upon the basis of equal rights as between communities in actual possession of independence. In other words, he first clearly affirmed the juridical principle of the complete international equality of independent states, however disproportionate their power.

Grotius undoubtedly had had the field of international relations explored by these, among other writers who had preceded him, but to him is certainly due the credit of evolving in his "De Jure Belli ac Pacis," a coherent system of law for the aggregation of States.

WHAT THE UNITED STATES HAS DONE.

But I turn from this interesting line of thought to consider, first, the part played by the United States in shaping the modern tendencies of international law, and next, whither those tendencies run. I have already spoken of

the international writers, of whom you are justly proud. It is not too much to say that the undoubted stream of tendency in modern international law to mitigate the horrors of war, to humanize or to make less inhuman its methods, and to narrow the area of its consequential evils, is largely due to the policy of your statesmen and the moral influence of your jurists.

The reason why you thus early in your young history as an independent power took so leading and noble a part in the domain of international law is not far to seek —it is at once obvious and interesting.

In the first place, you were born late, in the life of the world, into the family of nations. The common law of England you had indeed imported and adopted as colonists in the Eastern States, but subject as you then were to the mother country, you had no direct interest or voice in international relations, which were entirely within the domain of the sovereign power. But when you asserted your independence, the laws of the family of nations, of which you then became a member, were bound up with and became in part the justification for your existence as a sovereign power, and assumed for you importance and pre-eminence beyond the common law itself. Further, your remoteness from the conflicts of European powers and the wisdom of your rulers in devoting their energies to the consolidation and development of home affairs gave to your people a special concern in that side of international law which affects the interests, rights and obligations of neutrals; and thus, it has come to pass that your writers have left their enduring mark on the law of nations touching allegiance, nationality, neutralization and neutrality, although as to these there are points which still remain indeterminate.

It is substantially true to say that while to earlier writers is mainly due the formulation of rules relating to a state of war, to the United States—to its judges, writers and statesmen—we largely owe the existing rules which relate to a state of peace and which affect the rights and obligations of powers which, during a state of war, are themselves at peace.

On the other hand, while in Great Britain writers of great distinction on international law are not wanting, and while the judges of her prize courts have done a great work in systematizing and justifying on sound principles the law of capture and prize, it is true to say that British lawyers did not apply themselves, early, or with great zeal, to the consideration of international jurisprudence.

Nor, again, is the reason far to seek. Great Britain had existed for centuries before international law, in the modern sense, came into being. The main body of English law was complete. The common law, springing from many sources, had assumed definite and comprehensive proportions. It sufficed for the needs of the time. Neither English statesmen nor English lawyers experienced the necessity which was strongly felt on the Continent of Europe—the constant theatre of war—for the formulation of rules of international conduct.

The need for these was slowly forced upon England, and it is hardly too much to say that to the British Admiral, accustomed to lord it on the high seas, international law at first came, not as a blessing and an aid, but as a perplexing embarrassment.

(COMPLETED NEXT MONTH)

A PERMANENT INTERNATIONAL TRIBUNAL OF ARBITRATION.

ITS PRACTICABILITY—DIFFICULTIES IN THE WAY OF ITS ESTABLISHMENT — ITS MORAL FORCE — ECONOMIC DEMAND FOR IT — ENGLAND AND AMERICA READY FOR IT.

Addresses given at the Mohonk Arbitration Conference by JUGDE J. H. STINESS, PROFESSOR J. B. CLARK, HON. GEORGE S. HALE, JUDGE ROBERT EARL, EDWIN D. MEAD, DR. LYMAN ABBOTT, and WILLIAM ALLEN BUTLER, ESQ.

REASONABLENESS OF A PERMANENT TRIBUNAL.

BY HON. J. H. STINESS, LL.D., OF THE SUPREME COURT OF RHODE ISLAND.

If we were to take a poll of the country and ask the people from every part of the Union whether they believed a permanent tribunal of arbitration to be desirable, there would be, in my opinion, but a single answer, and the same response would come from our brethren across the water. There can be no difference among intelligent people as to the desirability of this method of settling international disputes. And since the science of war has progressed so rapidly we are coming almost face to face with the old paradox of an irresistible force meeting an impregnable object. If this continues as it promises to, our defences will be such that nobody can hurt us, and an enemy's attack will be such that nobody can repel it; and consequently we shall have to find some other means of settling a dispute than by war. Of course, the only way is that which this Conference is gathered to consider.

That international arbitration is desirable goes without saying; but the more vital question is, whether it is practicable. It seems to me that we may find an instructive parallel in the growth and development of the judicial system under which England and America are now living. As we turn back to our early history, we find that questions of guilt or innocence were at that time determined by the barbaric ordeals of the hot iron, the hand in hot water, and others which were supposed to deliver the innocent and to convict the guilty. After the Norman Conquest, we find that the trial by battle was introduced, and that both civil and criminal questions were settled by that form of trial. Each contestant selected a champion, and those two fought, with batons and leathern targets, from sunrise until sunset, unless the question at issue were sooner decided. How does this differ from the conduct of nations at present in case of war? There is no more sense or reason in determining national disputes in that way than there was formerly in determining individual disputes in that way. No intelligent community would consider the former for an instant; it seems to me impossible that any intelligent community can approve the latter. But this trial by battle, resorted to even in the reign of Elizabeth, was not formally abolished by act of Parliament until 1819. So slowly do customs change, so hard is it to wipe out that which has become a part of the history and practice of a people.

We may look, I think, for exactly the same line to be followed in the case of international disputes as we find in the case of individual disputes. We have seen coun-